

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of Golden Eagle Construction, Inc.	<b>FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION</b>
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The above matter came on for Prehearing Conference before Administrative Law Judge Richard C. Luis on January 31, 2007, at the Office of Administrative Hearings in Minneapolis. The record in this matter closed at the conclusion of the Prehearing Conference the same day.

Michael J. Tostengard, Assistant Attorney General, 1200 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2130, appeared on behalf of the Minnesota Department of Labor and Industry (Department). There was no appearance by or on behalf of Golden Eagle Construction, Inc. (Respondent).

**STATEMENT OF THE ISSUE**

Whether disciplinary action should be taken against the Respondent for violation of Minn. Stat. §§ 45.027, subd. 1a and 326.91, subd. 1(4) for performance in breach of contract by failing to complete a building project and for failure to respond to the Department's letters? Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. On December 8, 2006, a Notice of and Order for Hearing, Order for Prehearing Conference and Statement of Charges was mailed to the Respondent at its last known address – c/o Brian Adams, Golden Eagle Construction, Inc., 5581 Aberdeen Way, Big Lake, MN 56309. The Notice scheduled a Prehearing Conference for January 31, 2007.

2. The Notice of and Order for Hearing, Order for Prehearing Conference and Statement of Charges contains the following language, on page four:

1. Respondent's failure to appear at the prehearing conference may result in a finding that Respondent is in default, that the Department's allegations contained in the Statement of

Charges may be accepted as true, and that its proposed disciplinary action may be upheld.

3. The Respondent did not appear at the January 31, 2007, Prehearing Conference. It did not contact the Department, the Office of the Attorney General or the Administrative Law Judge to request a continuance. No Notice of Appearance was filed by the Respondent.

4. The allegations as set forth in the Notice of and Order for Hearing, Order for Prehearing Conference and Statement of Charges are deemed proved and are incorporated into these Findings by reference.

Based on the Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judge and the Commissioner of Labor and Industry have jurisdiction herein pursuant to Minn. Stat. §§ 14.50, 326.91 and 326.92.

2. The Respondent was given timely and proper notice of the Prehearing Conference in this matter, and the Department has complied with all procedural requirements of law and rule.

3. Under Minn. R. 1400.6000, the Respondent is in default as a result of its failure to appear at the scheduled Prehearing Conference.

4. Under Minn. R. 1400.6000, when a party defaults, the allegations and issues set out in the Notice of and Order for Hearing, Order for Prehearing Conference and Statement of Charges may be taken as true and deemed proved. The Administrative Law Judge therefore takes those allegations and issues as true, and they are deemed proved.

5. Based on the facts set out in the Notice of and Order for Hearing, Order for Prehearing Conference and Statement of Charges, the Respondent has violated Minn. Stat. §§ 45.027, subd. 1a and 326.91, subd. 1(4). As a result, it is subject to discipline by the Minnesota Department of Labor and Industry.

6. An Order by the Commissioner of Labor and Industry imposing disciplinary action against the Respondent is in the public interest within the meaning of Minn. Stat. §§ 45.027, subd. 7(a)(1) and 326.91, subd. 1.

Based on the Conclusions, the Administrative Law Judge makes the following:

## **RECOMMENDATION**

IT IS RECOMMENDED that appropriate disciplinary action be taken against Golden Eagle Construction, Inc.

Dated this 23rd day of April, 2011

/s/ Richard C. Luis

RICHARD C. LUIS

Administrative Law Judge

Reported: Default

## **NOTICE**

This report is a recommendation, not a final decision. The Commissioner of the Department of Labor and Industry will make the final decision after a review of the record. The Commissioner may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Nancy Leppink, Director of Legal Services, Minnesota Department of Labor and Industry, 443 Lafayette Road, St. Paul, MN 55155 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.63, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

**R. C. L.**